

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of  
Policy and Rules Concerning the  
Interstate, Interexchange Marketplace

)  
) CC Docket No. 96-61  
) (Phase II)  
)

Implementation of Section 254(g) of the  
Communications Act of 1934, as amended

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**NYNEX REPLY COMMENTS**

**INTRODUCTION AND SUMMARY**

The NYNEX Telephone Companies<sup>1</sup> ("NYNEX") hereby respond to the comments of other parties addressing Sections III, VII-VIII of the Notice of Proposed Rulemaking ("NPRM") in this proceeding ("Phase II"). In our Comments, NYNEX showed that the Commission should exercise its forbearance authority to permit the detariffing of interstate, interexchange services in order to advance the public interest by enhancing long distance competition; that it must do so for all interstate carriers, including the former Bell Operating Companies ("BOCs"), to fully effectuate the competitive environment that the Congress and the Commission seek to implement; and that all carriers should be permitted to market a package of customer premises equipment ("CPE") and interstate, interexchange services as required to serve customer needs.

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<sup>1</sup> The NYNEX Telephone Companies are New England Telephone and Telegraph Company and New York Telephone Company.

Although NYNEX's views are supported by many commenters, others argue against even permissive detariffing (or propose that the Commission establish new tariff "posting" rules which would largely negate the pro-competitive advantages of detariffing); against applying the same tariff forbearance to BOC provision of long-distance services; and against permitting the combined ("bundled") offer of CPE and interstate, interexchange services. Adoption of these views would diminish marketplace competition and public benefit in favor of greater -- not lesser -- regulation, a direction wholly contrary to national telecommunications policy as established by Congress and pursued by the Commission.

The Commission began this proceeding by observing that, with respect to detariffing and CPE unbundling, "we seek to promote competition by reducing or eliminating existing regulations that may no longer be in the public interest . . ." (NPRM ¶ 4). As discussed below, NYNEX favors the deregulatory approach outlined in the NPRM, and urges the Commission to utilize fully its statutory authority (including its new Section 10 forbearance authority) to promote and encourage competition by eliminating these impediments to greater competition.

# **I. THE RECORD SUPPORTS THE PERMISSIVE DETARIFFING OF LONG DISTANCE SERVICES FOR ALL CARRIERS**

NYNEX has concurred with the Commission's tentative conclusion that the Telecommunications Act of 1996 ("the Act") requires the Commission to forbear from mandatory tariffing of non-dominant interexchange carriers' domestic, interstate

services.<sup>2</sup> We have shown that the Commission should afford this treatment to all interexchange service providers, including the BOCs.<sup>3</sup> The record substantially supports the Commission's application of forbearance on a permissive basis, i.e., detariffing should not be a uniform mandate imposed on the industry.<sup>4</sup>

The contentions of those parties opposing even permissive detariffing miss the mark.<sup>5</sup> They ignore the reality that intense competition in the interexchange marketplace -- especially with BOC entry -- will effectively substitute for regulation in protecting consumer interests and securing public benefits.<sup>6</sup> Such parties also do not recognize that the permissive approach will allow for tariffing to be utilized in instances where it would be beneficial, e.g., by reducing transaction costs.<sup>7</sup> As U S West indicates (pp. 4-5), tariffs permit general offerings to be made with a minimum of complexity, an important issue when a carrier serves millions of customers. Furthermore, permissive detariffing is the most deregulatory approach, and most consistent with Congress' aims, since it enables competing providers, rather than government regulators, to determine how best to structure their offerings and compete in the marketplace.<sup>8</sup>

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<sup>2</sup> See NPRM at ¶ 19; NYNEX 2-3.

<sup>3</sup> NYNEX 2-5.

<sup>4</sup> See, e.g., AT&T, Sprint, LDDS WorldCom, Cable & Wireless, GTE, Frontier, MFS, Bell Atlantic, U S West, Pacific Tel., CompTel.

<sup>5</sup> See, e.g., Alabama PSC, Louisiana PSC, Missouri PSC, Ohio Office of Consumers Counsel, Tennessee Attorney General.

<sup>6</sup> In any case, the complaint process will still be available

<sup>7</sup> See, e.g., Comments of Ameritech (pp. 1-3) at which extol the benefits of tariffs in establishing clear customer-carrier relationships.

<sup>8</sup> E.g., Pacific Tel. 5.

Those commenters that would single out the BOCs for disparate treatment, i.e., required tariffing, are wrong.<sup>9</sup> It bears emphasis that the BOCs will be entering the fiercely long distance market competition without any market positioning. As “new entrants,” required tariffing for the BOCs would subject them to serious competitive disadvantage and nullify the benefits of increased competition they can bring to the interexchange market.

Finally, some commenting parties propose surrogates for tariffing such as non-tariff filings with the FCC<sup>10</sup> or public posting of rate information.<sup>11</sup> Such proposals should not be adopted since they would be administratively burdensome, negate the simplification and cost-saving benefits of detariffing, and not effectively remedy the current issue of price collusion (see Section II, infra).

## **II. BOC LONG DISTANCE DETARIFFING IS NECESSARY AS A PRO-COMPETITIVE REMEDY TO STIMULATE MARKETPLACE PRICE COMPETITION**

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In the NPRM the Commission properly indicated that it had two primary means of enhancing competition in the interstate, interexchange markets: (1) to eliminate tariff requirements which, inter alia, contributed to a lack of price competition; and (2) to enable the competitive entry of the BOCs into these markets (NPRM ¶ 81).

As NYNEX earlier pointed out, these actions are both individually and collectively necessary. That is, while each step will help individually open the long distance markets

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<sup>9</sup> E.g., ACTA, CompTel, LDDS WorldCom.

<sup>10</sup> E.g., Rural Tel. Coalition.

<sup>11</sup> E.g., GSA, NARUC.

to competition, the greatest consumer good will be realized by enabling effective BOC entry on the same, deregulatory terms as are applied to market incumbents (NYNEX 3-5).

Not surprisingly, effective BOC entry is opposed by the same market incumbents. First, they argue that there is no tacit price collusion among incumbents.<sup>12</sup> From this vantage point, they argue essentially that effective BOC entry is not necessary.<sup>13</sup> To a large extent, all of their arguments that conditions for “collusion” do not exist (AT&T 22-23) or that discounting is substantial (MCI 21) are largely irrelevant. Whether active or tacit “price collusion” exists or not, there can be no denying the overwhelming evidence that these markets are not characterized by price competition.<sup>14</sup> Prices of the major long distance carriers have long tracked one another, resisting competition even when BOC access charges decline substantially. Congress and the Commission are right to conclude that BOC entry is necessary to disrupt the price leadership umbrella that is blatantly sheltering marketplace incumbents to the detriment of consumers. Even if the consumer gain were just a fraction of the potential \$ 24 billion savings presented by Professor McAvoy, the Commission must act to secure this gain for consumers.<sup>15</sup>

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<sup>12</sup> See, e.g. MCI 19-22.

<sup>13</sup> See, e.g., LDDS WorldCom 19 (“there seems little need for the Commission to proceed further on this issue.”) Similarly, AT&T advises that “there is no economic basis for concluding that additional facilities-based entry would materially reduce the negligible (at most) risk of coordinated pricing” (AT&T 24). It is no surprise that market incumbents wish to limit competition in the marketplace. However, it is ironic (and important) that AT&T bases its arguments against the potential for collusion on “the absence of significant barriers to entry” (AT&T 23). The Commission should ignore AT&T’s proposal to keep BOCs out of long distance in favor of reducing further “barriers to entry” in keeping with AT&T’s own arguments.

<sup>14</sup> BellSouth 4-16 and attached affidavits of Professors Hausman and McAvoy.

<sup>15</sup> BellSouth 24. Remarkably, ACTA hypothesizes AT&T/BOC “collusion” based on their common heritage (ACTA 16). This argument, of course, ignores more than a decade of history and experience, the fact that the BOC “new entrants” will begin as resellers, and that current “price leadership”

Second, some commenters argue that the BOCs should not be afforded tariff relief because they are still considered “dominant carriers” in the long distance market until other Commission proceedings are completed.<sup>16</sup> As shown in detail in Phase I of this proceeding, this classification should be expeditiously changed because it is only a vestigial artifact of 1980’s regulatory decisions not yet brought abreast of 1990’s marketplace realities.<sup>17</sup> Further, it has been shown that the application of “dominant” carrier regulations (e.g., tariff filing delays, Section 214 approvals) work to the detriment of competition and consumers, as long recognized by the Commission itself.<sup>18</sup> This point is underscored in this proceeding by the consumers themselves.<sup>19</sup>

Third, some commenters argue that the BOCs should not be detariffed because of their alleged potential to diminish competition through misuse of their local exchange facilities.<sup>20</sup> There is no proof of the incentive or potential for such conduct for any BOC long distance services, most especially not for the “out-of-region” services at issue herein. It has been repeatedly shown that the speculative abuses would be both impractical of

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amongst today’s major players will be made more difficult -- not easier -- by BOC market entry. It should simply be dismissed.

<sup>16</sup> CompTel 19.

<sup>17</sup> See NYNEX Comments and Reply Comments in Phase I of this proceeding.

<sup>18</sup> See NYNEX Comments and Reply Comments, In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, Notice of Proposed Rulemaking, FCC No. 96-59, CC Docket 96-21 (released February 14, 1996).

<sup>19</sup> Corporate Telecom Managers 3-6. These consumers also forcefully make the point that BOC “in-region” market entry is required to advance the public interest.

<sup>20</sup> See, e.g., LDDS WorldCom 16.

execution and self-defeating in effect.<sup>21</sup> These arguments need not be repeated here. Moreover, even assuming arguendo that these arguments had merit (which they do not), they would provide a basis for reviewing exchange access regulation, not for burdening new competitive long distance efforts.<sup>22</sup>

Fourth, CompTel argues that Commission consideration of detariffing for the BOCs should be held off until “significant experience” is gained about their interexchange business.<sup>23</sup> There are several substantial flaws in this approach. As a matter of national telecommunications policy, the BOCs are not being “fit” into the existing marketplace; rather, they have been released from the confinement of the MFJ affirmatively to disrupt the tacit price umbrella and to provoke more active price competition, even among market incumbents. Further, there is no interest in the part of the Congress or the Commission to effect a “steady state” in regulation. On the contrary, the Commission has been given new authority to pursue a deregulatory policy. Perhaps most importantly, the delay sought would encumber not just the BOCs, but also the consumers who will benefit from prompt, effective competition.

For all of these reasons, this “wait-and-see” approach should be rejected. The Commission properly seeks in the NPRM to encourage and promote interstate,

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<sup>21</sup> NYNEX Reply (Phase I), filed May 3, 1996 at 9-14. Significantly, AT&T again confuses Congress’s conditional approach to BOC “in-region” long distance services (Sections 271-271 of the 1996 Act) with its unconditional approach to “out-of-region” markets (AT&T 25).

<sup>22</sup> Indeed, even the proponents of these arguments recognize that they essentially relate to arguments for BOC access regulation, not long distance service burdens, e.g., LDDS WorldCom 15, n. 41 (“[i]t should be noted that the LEC’s interstate access tariffs are not affected in any way should the Commission adopt its proposed forbearance policy . . .”).

<sup>23</sup> CompTel 19.

interexchange competition for the benefit of consumers. To achieve its goals, it must enable prompt, effective BOC long distance market entry on the same detariffed basis it should adopt for all other carriers.<sup>24</sup>

### **III. PARTIES DO NOT JUSTIFY A CONTINUED BAR ON CARRIERS' BUNDLING OF CPE WITH INTERSTATE, INTEREXCHANGE SERVICES**

While the Commission's proposal (NPRM ¶ 88) to allow non-dominant interexchange carriers to bundle CPE with interstate, interexchange services has considerable merit, we have indicated the importance of extending the benefit of this regulatory relief to all carriers.<sup>25</sup> MCI's proposal (p. 25) for a one-year trial period for bundling should not be adopted. That proposal would introduce an additional administrative/regulatory process that is unnecessary since the Commission can always waive or modify its rules if the public interest so requires. In any case, the continued availability of unbundled offerings separate from the offerings to be bundled, as supported by NYNEX,<sup>26</sup> will provide a safeguard as the new policy is effected.

A few parties would single out the BOCs and deprive them of the benefits of removing the no-bundling rule. These parties assert that BOC dominance in exchange access and local exchange markets justifies this approach.<sup>27</sup> Those parties' arguments

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<sup>24</sup> MCI argues that the BOCs may not decide to provide additional competition to it and the other long distance marketplace incumbents (MCI 20, n. 29). Certainly, the BOCs will compete. That is not in doubt. What is important, however, is that the Commission set rules for effective BOC entry. If it follows the suggestions of MCI and other incumbents, it will impede, not promote, such competitive entry.

<sup>25</sup> NYNEX 5-7. See also Bell Atlantic, U S West, SBC.

<sup>26</sup> See also GTE, Pacific Tel., TRA.

<sup>27</sup> See Compaq 4, MCI 26-27.


should be rejected. The relevant market for the removal of the CPE no-bundling rule is the domestic interstate, interexchange market, in which the BOCs as new entrants will certainly lack any dominating influence. As highlighted by Bell Atlantic (p. 6), denying new entrants the regulatory flexibility to offer services comparable to those of the incumbents would hurt consumers and undermine the very competition that Congress and the FCC are relying upon the BOCs to bring to the market.

#### IV. CONCLUSION

The Commission should reject the views and proposals of commenters which seek to promote continued and additional regulation, not greater competition, as national telecommunications policy. As proposed in the NPRM, the Commission should and may lawfully now remove tariffing and CPE "unbundling" requirements from *all carriers'* provision of domestic, interstate, interexchange services. Importantly, this same pro-competitive deregulatory approach must be applied to the former BOCs as new entrants into these markets to realize the public interest benefits both Congress and the Commission properly seek to secure.

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CERTIFICATE OF SERVICE

I, Susan Sonnenberg hereby certify that on the 24th day of May, 1996, a copy of the foregoing NYNEX Reply Comments in CC Docket No. 96-61 (Phase II) was served on each of the parties listed on the attached Service List by first class U.S. mail, postage prepaid.

  
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